

____ BILL NO. ____

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE PROCEDURE FOR REVIEW OF THE CLASSIFICATION OF STATE POSITIONS WITH AN ADMINISTRATIVE REVIEW RATHER THAN A GRIEVANCE PROCEDURE; PROVIDING FOR AN APPEAL; APPLYING THE PROCEDURE FOR REVIEW OF THE CLASSIFICATION OF POSITIONS TO ALL EXECUTIVE BRANCH AGENCIES; AND AMENDING SECTIONS 2-18-203, 2-18-1001, 2-18-1011, AND 87-1-205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions -- change in classification. (1) The department shall ~~continuously~~ periodically review all positions ~~on a regular basis~~ and adjust classifications to reflect significant changes in duties and responsibilities. In the event that adjustments are to be made to class specifications, class series benchmarks, or criteria used for allocating positions to classes affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar and teachers' classification plans, which plans must remain mandatory negotiable items under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to ~~appeal~~ have the allocation or reallocation of a position to a class reviewed. The grade assigned to a class and factors assigned to class series benchmarks are not ~~appealable subjects under 2-18-1011 through 2-18-1013~~ subject to review pursuant to [section 4].

(3) The period of time for which retroactive pay for a classification ~~appeal~~ review may be awarded under ~~2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter~~ this part may not extend beyond 30 days prior to the date on which the ~~appeal~~ review was ~~filed~~ requested pursuant to [section 4]."

Section 2. Section 2-18-1001, MCA, is amended to read:

"2-18-1001. Transportation department personnel grievances -- classification review -- hearing.

(1) An employee of the department of transportation who is aggrieved by a serious matter of ~~his~~ employment based upon work conditions, supervision, or the result of an administrative action, except the review of the classification of a position pursuant to part 2 of this chapter, and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of transportation against an aggrieved employee because the employee has filed or attempted to file a grievance with the board ~~shall is also be~~ the basis for a grievance and ~~shall entitle~~ the employee is entitled to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance."

Section 3. Section 2-18-1011, MCA, is amended to read:

"2-18-1011. Classification review or compensation grievance -- retaliation -- hearing on complaint. (1) An employee or ~~his~~ an employee's representative affected by the operation of ~~parts~~ part 1 ~~through or part 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board~~ request for review pursuant to [section 4].

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a ~~complaint with the board shall also be~~ request for classification review is also the basis for a complaint and ~~shall entitle~~ entitles the employee to file a complaint with the board of personnel appeals and to be heard under the provisions of the grievance procedure prescribed by the board.

~~(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from.~~

1 ~~The presumption is rebuttable."~~

2
3 **NEW SECTION. Section 4. Classification review procedure -- appeal procedure.** (1) An employee

4 may request a review of the classification of the employee's position.

5 (2) If an employee requests a review of the classification of the employee's position, the review must
6 first be conducted by the employing agency and must be conducted pursuant to rules adopted by the
7 department.

8 (3) If an employee whose position classification was reviewed pursuant to subsection (2) is dissatisfied
9 with the results of that review, the employee may request a review by the department. A review conducted by
10 the department pursuant to this subsection must be conducted in accordance with rules adopted by the
11 department.

12 (4) (a) If an employee whose position classification was reviewed by the department pursuant to
13 subsection (3) is dissatisfied with the results of that review, the employee may request a review of the
14 classification by a review panel agreed upon by the department and the employee's representative. The review
15 panel must consist of a manager, a labor representative, and a third person with classification knowledge
16 selected by the department. The panel members must be selected pursuant to rules adopted by the department.
17 A review conducted by the panel must provide an opportunity for a hearing at which the employee may present
18 evidence and argument. The hearing may be conducted in person, by telephone, or by video conference. The
19 review panel is not bound by statutory or common-law rules of evidence.

20 (b) If the panel determines that the employee's position is not classified correctly, the panel may direct
21 the employing agency to change the disputed classification and the agency shall comply with the direction of
22 the panel.

23 (c) The decision is not subject to appeal to an administrative or judicial entity and is not subject to review
24 by a district court pursuant to Title 2, chapter 4, part 7.

25 (5) A decision by an agency, the department, or a panel pursuant to subsection (2), (3), or (4) must be
26 based on the classification standard in effect at the time that the review was requested by the employee.

27 (6) The department shall adopt rules to implement this section.

28
29 **Section 5.** Section 87-1-205, MCA, is amended to read:

30 **"87-1-205. Grievance procedure -- classification review.** (1) An employee of the department, who

1 is aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of
2 an administrative action, except the review of the classification of a position pursuant to Title 2, chapter 18, part
3 2, and who has exhausted all administrative remedies within the department; is entitled to a hearing before the
4 board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through
5 2-18-1013. Any order of the board is binding upon the department.

6 (2) The classification of a position pursuant to Title 2, chapter 18, part 2, may be reviewed only pursuant
7 to [section 4]."

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9 **NEW SECTION.** **Section 6. Codification instruction.** [Section 4] is intended to be codified as an
10 integral part of Title 2, chapter 18, part 2, and the provisions of Title 2, chapter 18, part 2, apply to [section 4].

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12 **NEW SECTION.** **Section 7. Saving clause.** [This act] does not affect rights and duties that matured,
13 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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